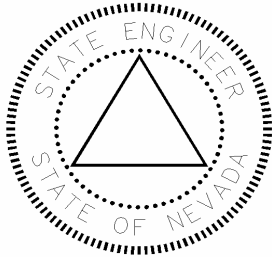


NEVADA DIVISION OF WATER RESOURCES ANNUAL NEWSLETTER TO LICENSED STATE WATER RIGHT SURVEYORS

May 2009



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MESSAGE FROM JASON KING ACTING STATE ENGINEER

Although the past year has witnessed a slow-down in the economy, the number of water right applications being filed has not slowed down nor has any less attention been given to the various water projects throughout the state. There is no changing the fact that water resources in Nevada are reaching critical mass. Since Nevada is the driest state in the nation and was the fastest growing state in the nation for 21 of the past 23 years, water is a critical issue that is consequently very contentious.

Fortunately for Nevada, there are a great number of concerned, qualified and conscientious professionals working in the field of water resources – all of you included. However, just because we have so many dedicated professionals working in the field of water resources, does not mean there is more water in the aquifers or stream beds. What it does mean though is that through all of your work, and the work of your colleagues, collectively we can stretch every drop of water in the state so as to maximize its beneficial use and ensure good water quality.

The Division of Water Resources' mantra is "*If we don't protect the water resource, no one else will*". In my mind, the "we" portion of that statement includes all of you and I hope you think of Nevada's water resources in that way. It is easy to lose sight of the critical importance of protecting the resource in the face of the various pressures put on you by your clients. But it is also very important to realize that your profession makes you part

of arguably the most important profession in Nevada – that of being responsible for the development, protection and enhancement of our most precious resource – WATER.

While I take this time to thank you all for your hard work and dedication over the years, I have to stress that now is not the time to rest on our laurels. Nothing is getting easier when it comes to water in Nevada. I challenge all of you to "do right" by the resource when making your decisions. It is all of our responsibility to protect and enhance the use of our limited water resources.

Jason King, P.E.

Website

For access to water resource data, please visit us on the web at <http://water.nv.gov>. The website will allow you to access our permit, well log, water level, and title databases as well as scanned documents such as water right maps, permits, and well logs. The site also provides access to forms, publications, orders, rulings, and a schedule for upcoming hearings.

If you have any questions, comments or suggestions regarding the web site, please email David Wooldridge (dwool@water.nv.gov).

Fines and Penalties

SB 274, passed by the 74th Legislature, provided the State Engineer with additional authority to impose administrative fines, to require a person to replace certain unlawfully taken or wasted water, and to recover expenses incurred in investigating and stopping various water law violations. During the spring and summer of 2008, draft regulations were presented for public review at two rounds of workshops held in communities throughout Nevada. The final regulations were adopted September 18, 2008 at a public hearing held in Carson City. Following review by the Legislative Counsel Bureau, the final regulations were codified in the Nevada Administrative Code (NAC). The adopted final regulations may be viewed via a link on the Division's website. Please note that fines cannot be assessed prior to July 1, 2009. These regulations were adopted to encourage compliance with Nevada water laws, and it is the desire of the Division to work with any person violating Nevada water law to resolve problems without having to resort to monetary fines.

Return For Correction Update

For the last two years, this Newsletter reported that 30% of applications filed with this office are returned for correction. To address this problem, the Division tabulated the defects that resulted in returns for corrections and reported the results in the 2007 and 2008 newsletters. During 2008, the Division presented a continuing education class "Successfully Navigating the Permitting Process" in both Carson City and Las Vegas. The class was offered four times and was attended by 97 water right professionals. Unfortunately, the return-for-correction rate is still between 25 and 30%. Surveyors are urged to carefully check their work prior to submission to this office. In these challenging times with decreased budgets and staff, neither your clients nor the Division can afford the delays caused by careless work.

Forms

During the past two years, the Division has updated a number of the commonly used forms. Please make sure you are using the updated version and review the attached instructions. The Division no longer requires the submission of forms on colored paper.

The Division is in the process of converting the online forms to a writable PDF format that allows the user to enter data and then save, edit and print the form without altering the basic framework of the form. This should make the online forms much more user friendly.

Extension of Time Requests

On November 1, 2007, the Division notified water right professionals throughout the state that beginning on November 1, 2008 staff would be sharpening their review of Applications for Extension of Time to ensure that the permittees are complying with the intent of the law. NRS 533.380 (3)(b) states that the State Engineer shall not grant an extension of time unless he determines from the proof and evidence submitted that the applicant is proceeding in good faith and with reasonable diligence to perfect the application. NRS 533.380(6) states that the measure of reasonable diligence is the steady application of effort to perfect the application in a reasonably diligent manner under all the facts and circumstances. Question # 7 on the Application for Extension of Time Form asks the affiant to describe progress made during the last year. The response to this question should describe actions taken and progress made to advance the project. Please note that if the response to Question # 7 on the application is inadequate, the Division will hold action on the pending extension and return the submitted form for additional information. Failure to meet the statutory requirements will result in a call for the required Proof of Completion and/or Proof of Beneficial Use based on current conditions. Failure to file the Proof will result in cancellation of the permit.

Legislative News

The 75th Legislative Session is coming down to the final few weeks with a flurry of activity to resolve difficult budget issues and take action on pending legislation. As this Newsletter is being drafted, 7 Assembly bills and 3 Senate bills are pending that relate to Nevada water law. You are encouraged to review the full text of the bills and follow their progress through the legislature at <http://leg.state.nv.us/75th2009/Reports> .

Well Locations

In June 2006, the Division revised and adopted *Regulations for Water Well and Related Drilling*. Under NAC 534.320 a well driller is required to notify the Division before drilling, reconditioning or plugging a well by submitting a Notice of Intent. Under Subsection 4, the Notice of Intent must include GPS coordinates. In addition, the Division now routinely obtains GPS coordinates of existing wells when conducting field investigations, crop inventories or water level measurements. The GPS data provides the Division with accurate “as built” locations for the wells. The Division cannot approve a Notice of Intent card, Proof of Completion or Proof of Beneficial Use if the actual location is more than 300 feet from the permitted location and/or is in a different quarter quarter. The permittee will be required to file an application to correct the point of diversion. So, to avoid future problems, it is critical that the water right surveyor and their client accurately determine where the proposed well is to be drilled at the time the application is filed and the map prepared.

Recent Orders and Rulings

Water right professionals are encouraged to keep abreast of Orders and Rulings affecting basins in which they work. New Orders and Rulings are posted on the Division’s website when issued, and a link is established on the home page to make the information easily accessible to the public. Older Orders and Rulings may be searched by number, basin or type/reason on the website by following the menus under Hearings and Adjudications. Order 1197, signed November 4, 2008, establishes guidelines for the filing of new appropriations and change applications in Amargosa Valley, Basin 230. A designation hearing for Pahrnagat Valley, Basin

209, was held in Alamo on March 10, 2009. Water right professionals working in Pahrangat Valley should watch the website for the issuance of the Order.

Encumbrances and Re-conveyances

The Division receives hundreds of encumbrance documents every year from private individuals, banks, or financial institutions. There are two methods for filing these instruments with our office, each with its own pros and cons. The more formal method is to use the standard *Report of Conveyance* (ROC) form, provide a recorded copy of the Deed of Trust or Notice of Pledge, and pay a filing fee of \$25 plus \$10 for each individual file encumbered. When filing the Deed of Trust instrument, the Notice of Pledge is redundant and unnecessary. When a Deed of Trust is filed under an ROC, the Division processes the filing in order of receipt date (meaning processing is delayed by the current backlog), tracks the filing in the Titles database, and mails a letter of confirmation.

The second method to file an encumbrance is the *instrument filing fee method*. Under this method, a copy of a Notice of Pledge for each file and a \$1 per file fee is submitted. The Division inserts a copy of the Notice of Pledge in each file to be encumbered within a few days of receipt. No letter of confirmation is mailed, but if a duplicate copy of the Notice of Pledge is provided with a self-addressed stamped envelope, a technician will sign the copy and return it to the sender. A model Notice of Pledge form is available on the Division's website. Please note that the Notice of Pledge must be signed by both the lender and the borrower and must reference the original recording number of the Deed of Trust. This method of filing an encumbrance is preferred by the Division because it offers essentially the same protection for the lender but is quicker, easier, and less costly.

Under either method, when the loan is paid off, the re-conveyance instrument needs to be forwarded to this office to release the encumbrance on our records. The re-conveyance document will be filed without any fees or other documentation; however, the re-conveyance must indicate the water rights to be released specifically or by reference to the original document which should already be on file.

Remember, filing an encumbrance on a water right does not prevent a future sale and /or transfer, but it can put a halt to approval of an Application to Change the place of use. When an Application to Change the place of use of an encumbered water right is filed, it should be accompanied by a re-conveyance or permission of the lender.

Help Us, Help You

Please make sure that you completely fill out your renewal notice with e-mail address, mailing address and phone number. E-mail is a very efficient and inexpensive method for the Division to notify water right professionals of changes in forms or policies, new legislation, upcoming training opportunities, or public workshops.

The Division is working to streamline many tasks and make all of our processes more efficient. Any recommendation you may have concerning how we can better conduct business would be appreciated. Please feel free to call or e-mail us with any suggestions. For comments on the website and/or online databases, contact David Wooldridge (dwool@water.nv.gov). For other comments, if you are uncertain who to direct your suggestions to, contact Richard Lisle (rlisle@water.nv.gov) and he will ensure that your comment is forwarded to the appropriate staff.